APPENDICES

APPENDIX A

For the convenience of the Court, plaintiffs provide this list and brief description of their expert medical and theological witnesses.*

The medical witnesses included:

Dr. Robert T. Bliss, a practicing physician who provides abortion services in Akron and specializes in family planning. Dr. Bliss testified as to the difficulties he would face as a physician if compelled to comply with the informed consent and waiting period requirements of the Akron ordinance.

Dr. Charles V. Bowen, a practicing physician, specializing in obstetrics and gynecology. At the time of trial he was Secretary of the Summit County Medical Society, a former Chairman and current member of the Maternal and Infant Health Committee, and a member of the Akron Obstetrical and Gynecological Society. Dr. Bowen described his visits to the three abortion clinics in Akron and testified that there was no medical need for an ordinance.

Dr. Robert Dale Crist, Associate Professor of Obstetrics and Gynecology and Assistant Professor of Biochemistry, University of Kansas, School of Medicine. Dr. Crist is board certified and maintains a practice in obstetrics and gynecology. He is a member of the Task Force on Adolescent Pregnancy, American College of Obstetricians and Gynecologists. Dr. Crist described various abortion techniques and their risk factors in both the first and second trimesters of pregnancy. He further testified as to the medical and psychological risks caused by a waiting period and the adverse effects on minors of requiring parental notice or consent prior to abortion.

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* Plaintiffs do not list here approximately fifteen other witnesses. These witnesses included: abortion clinic personnel; Planned Parenthood officials; two Akron City Council members; state and county health and welfare officials; hospital medical records administrators; one of the drafters of the Akron ordinance; and clergy members.

Dr. Henry David, Director of the Transnational Family Research Institute, Bethesda, Maryland, and Associate Clinical Professor of Psychology, University of Maryland Medical School. Dr. David has a Ph.D. in clinical psychology and is a certified psychologist. He has been consultant to the World Health Organization and the National Academy of Sciences Institute of Medicine. He has written several books and testified concerning the positive psychological effects women experience after having an abortion.

Dr. Felix P. Heald, Professor of Pediatrics, University of Maryland School of Medicine, and Director of the Division of Adolescent Medicine, University Hospital. Dr. Heald is board certified in pediatrics with a subspecialty in adolescent medicine. He has had extensive experience in the areas of teenage sexuality and pregnancy and has served as a consultant for the United States Department of Health and Human Services. Dr. Heald testified about the medical and psychological problems of pregnant teenagers. He further testified as to the negative effects of requiring that certain information be given to pregnant teenagers during counseling.

Dr. Adele Hofmann, Director of the Adolescent Medical Unit, New York University Medical Center, Bellevue Hospital, and Associate Professor of Pediatrics, New York University Medical School. Dr. Hofmann is board certified in pediatrics with a subspecialty in adolescent medicine. She is the author of numerous books and articles on adolescent health care, sexuality and counseling and has twice been invited to testify before Senate committees. Dr. Hofmann testified concerning the medical and psychological problems faced by pregnant teenagers. She also testified about the negative effects on pregnant teenagers of the Akron parental notice and consent requirements, as well as the sections regulating informed consent.

Dr. Jay Katz, Adjunct Professor of Psychiatry and Law, Yale Law School, and supervisor of psychoanalysts at the Western Institute for Psychoanalysis. Dr. Katz is board certified in psychiatry, has been elected to the Institute of Medicine, is a Fellow of the American Psychiatric Association, and is

Co-Chairman of the Connecticut Bar Association Committee on the Legal Profession. He is the author of several books and numerous articles on psychoanalysis and law, family law, human experimentation and law and medicine. He was a consultant on a United States Department of Health, Education and Welfare study concerning informed consent and human experimentation, and has testified as an expert witness in numerous cases involving medical-legal matters. Dr. Katz described the concept of informed consent in medicine and law and testified that the informed consent requirements of the Akron ordinance would have an adverse impact on the physician/patient relationship.

Dr. Carl William Keck, Director of Health, City of Akron. Dr. Keck testified about a report he prepared and submitted to the Akron City Council during hearings on Akron City Ordinance 1870. The report provided statistical evidence indicating that there was no health related need to regulate Akron's abortion facilities.

Dr. Thomas Kerenyi, Chief of Obstetrics and Gynecology, Mt. Sinai Hospital, and Professor of Obstetrics and Gynecology, Mt. Sinai School of Medicine. He has written over 40 publications in the area of human reproduction. Dr. Kerenyi testified about second trimester abortion, premature labor, the difficulty in determining viability, and the information he provides patients concerning fetal characteristics.

Dr. Christopher Tietze, Senior Fellow in the Center for Policy Research of the Population Council. He has been a consultant for the World Health Organization, a member of the Advisory Committee on Obstetrics and Gynecology to the United States Food and Drug Administration, and has been Chairman of the Steering Committee of the World Health Organization's Task Force on Sequelae and Complications of Induced Abortions since 1973. Dr. Tietze has published over 200 articles in the area of human fertility and its regulation, including more than 100 articles on abortion. His work has been cited to by this Court in *Roe v. Wade.* Dr. Tietze testified about studies conducted in the United States and Great Britain

on the risks of mortality and morbidity associated with abortion.

The theological witnesses included:

Dr. Walter Weist, an ordained Presbyterian minister and member of the faculty of Pittsburgh Theological Seminary. He has a Ph.D. in Theology and teaches courses on theology and on ethical issues in law and human sexuality. Dr. Weist testified that defining an "unborn child" as a human life from the moment of conception is a religious view.

APPENDIX B

STANDARDS FOR OBSTETRIC-GYNECOLOGIC SERVICES

5th Edition, 1982

Published by the AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS.

GYNECOLOGY - AMBULATORY CARE - PAGE 16

Abortion

Ambulatory care facilities providing abortion services should meet the same standards of care as those recommended for other surgical procedures performed in the physician's office and outpatient clinic or the free-standing and hospital-based ambulatory setting. Physicians performing abortions in their offices should provide for prompt emergency treatment or hospitalization in the event of an unanticipated complication. Clinics and free-standing ambulatory facilities should have written agreements with nearby hospitals for the transfer of patients requiring treatment for emergency complications of abortion procedures.

Generally, abortions in the physician's office or outpatient clinic should be limited to 14 weeks from the first day of the last menstrual period. In a hospital-based or in a free-standing ambulatory surgical facility, or in an outpatient clinic meeting the criteria required for a free-standing surgical facility, abortions should be limited to 18 weeks from the last menstrual period. Prior to abortion, the woman should have access to special counseling that explores options for the management of an unwanted pregnancy, examines the risks, and allows sufficient time for reflection prior to making an informed decision. If counseling has been provided elsewhere, the physician performing the abortion should verify that the counseling has taken place.

In addition to the usual and customary history, physical examination, and indicated laboratory procedures, an Rh fac-

tor determination should be made. Aspirated tissue should be examined to ensure the presence of villi or fetal parts prior to the patient's release from the facility. If villi or fetal parts are not identified with certainty, the tissue specimen must be sent for further pathologic examination, and the patient must be alerted to the possibility of an ectopic pregnancy.

Rh immune globulin must be administered to every unsensitized Rh(D) negative woman who has an abortion.

APPENDIX C

AMERICAN PUBLIC HEALTH ASSOCIATION

Resolution

Adopted

November, 1979

THE RIGHT TO SECOND TRIMESTER ABORTION

The American Public Health Association,

Recognizing that it has consistently advocated women's right to abortion (Resolution #7626), physicians' freedom to perform abortion (#6718); and has urged the removal of state statutes restricting abortion (#7118), and supported the inclusion of abortion in public funding (#7025);

Acknowledging that although the United States Supreme Court has recognized women's right to abortion to the point of viability in the 1973 *Roe vs. Wade* decision, anti-abortion groups are harassing women seeking abortions, as well as abortion providers across the country, and are creating immense pressure on physicians who perform later abortion procedures; and

Further while acknowledging the greater safety of first trimester abortions, it is recognized that women who seek later termination abortions are often treated disrespectfully by hospital personnel who oppose abortion; and

Noting that only 9 percent of legal abortions are performed in the second trimester of pregnancy; that greater use of the dilatation and evacuation procedure make it possible to perform the vast majority of second trimester abortions during or prior to the 16th week after the last menstrual period (LMP), which is the 14th week of pregnancy; and that most women who seek abortions after the 16th week LMP are facing severe social and health circumstances, such as pregnancy at a very young age or involving a fetus with known serious congenital abnormalities or disease; and

Noting that through curtailment of funding at both the federal and state levels, poor women have seen their right to abortion erode; therefore

1. Renews its support of women's right to abortion up to and to the point of viability.

2. Urges strong opposition to local state proposed or enacted ordinances which present misleading and non-factual information which may be perceived to frighten and harass women who choose abortion and health care providers performing these abortions.

3. Urges endorsement of educational programs which train physicians and health care personnel to provide safe later abortion techniques of Dilatation and Evacuation and saline infusion.

4. Urges endorsement of the provision of second trimester abortion in free-standing qualified clinics that meet the state standards required for certifications.

APPENDIX D

NATIONAL MEDICAL COMMITTEE OF THE PLANNED PARENTHOOD FEDERATION OF AMERICA.

STANDARDS FOR EARLY MIDTRIMESTER ABORTION IN PLANNED PARENTHOOD AFFILIATES

Revised March, 1980

INTRODUCTION

Several studies have shown that, in programs conducted by experienced physicians, there are both increased safety and decreased costs of abortion with early second trimester dilatation and evacuation when compared with any other technique at this gestational stage, and with instillation techniques in the mid to late second trimester. The National Medical Committee, therefore, holds that selected Planned Parenthood Affiliates may provide abortion by D&E through 18 menstrual weeks, if outpatient second trimester procedures are permitted by state law.

Planned Parenthood Affiliates interested in adding a D&E program must have demonstrated competence in, and adequate facilities and equipment for, the performance of first trimester abortion. The D&E service must be planned in accordance with the protocol outlined in Approval of New Services (Part One—S&G, Section XV, Abortion), which includes the development of an affiliate manual of policies and procedures for D&E. These Standards are intended for such Affiliate programs.

It is expected that D&E services in Planned Parenthood Affiliate centers will utilize laminaria tents for dilatation inserted prior to the evacuation procedure, and, generally, mild analgesia and local anesthesia. Prophylactic antibiotics are appropriate when laminaria are used.

It is preferable for D&E programs using general anesthesia and heavy sedation to be conducted at local hospitals. How-

ever, such D&E programs may be undertaken in approved Affiliate clinics if (a) all of the Standards outlined here are observed, (b) provision is made for a certified anesthetist or anesthesiologist to participate in each procedure, and (c) special approval is obtained in advance.

APPENDIX E

STATE LAWS RESTRICTING SECOND TRIMESTER ABORTIONS TO HOSPITALS

1. Conn. Agencies Regs. § 19-13-D54 (1973);
2. Ga. Code Ann. § 26-1202(b) (1973);
3. Hawaii Rev. Stat. § 453-16(a)(2) (1970);
4. Idaho Code Ann. § 18-608.2 (1973);
5. Ill. Rev. Stat. ch. 111-1/2 ¶¶ 157-8.1 through 157-8.16 (1974);
6. Ind. Code § 35.1-58.5(b)(2) (1974);
7. Mass. Gen. Laws Ann. ch. 112, § 12N(2) (West 1974);
8. Mich. Admin. Code R. 325.3851 (1976);
9. Mont. Rev. Code Ann. § 94-5-618 (1974);
10. N.Y. Pub. Health Law § 4164 (McKinney 1974);
11. Okla. Stat. tit. 63, § 1-731.B (1978);
12. Tenn. Code Ann. § 39-301(e) (1973);
13. Utah Code Ann. § 76-7-302(2) (1974);
14. Va. Code § 18.2-73 (1975);
15. Wisc. Admin. Code § Med. 11.05 (1978);
16. N.J.A.C. 13:35-7.2 (1978).*

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* This rule provides that "within a period of gestation not exceeding 16 weeks" abortion using dilatation and evacuation may be performed in licensed health care facilities. Originally the rule would have limited all second trimester abortions to hospitals on an inpatient method regardless of the procedure used. However, as a result of a court challenge to the rule, the New Jersey Board of Medical Examiners amended the rule to permit the performance of abortions by dilatation and evacuation up to the sixteenth week of pregnancy. *Livingston v. N.J. Board of Medical Examiners,* 168 N.J. Super. 259 (App. Div. 1979), *certif. denied,* 82 N.J. 291 (1979).

In addition, such laws have been enjoined in six states: Ky. Rev. Stat. § 311.760(2) (1974); *Wolfe v. Stumbo,* C80-0285-L (A) (W.D. Ky. Dec. 3, 1980); La. Rev. Stat. Ann. § 1299.35.2 (1981); *Margaret S. v. Treen,* No. 78-2765 Sec. C (E.D. La. Nov. 27, 1981) (summary judgment); Mo. Ann. Stat. § 188.025 (Vernon 1978); *Planned Parenthood Association of Kansas City, Missouri v. Ashcroft,* 664 F.2d 687 (8th Cir. 1981), *cert. granted,* 50 U.S.L.W. 3934 (U.S. May 25, 1982) (No. 81-1623); Nev. Rev. Stat. 442.250.2 (1973), *Glick v. List,* CV-R-150 (BRT) (D. Nev. July 7, 1981) (*preliminary injunction*); Ill. Ann. Stat. ch. 38, § 8124 (1979); *Charles v. Carey,* 79 C4551 (N.D. Ill. Nov. 16, 1979) (preliminary injunction against criminal statute; regulation issued by Illinois Department of Public Health was not challenged in this action); N.D. Cent. Code, § 14-02.1-04.2 (1974); *Miks v. Olson,* Civ. No. A3-82-78 (D.N.D. June 11, 1982) (*preliminary injunction*) (plaintiffs have stipulated not to "willfully" perform abortions after the first trimester in a nonhospital setting).

APPENDIX F

CONSTITUTIONAL PROVISIONS

1. *United States Constitution, Article III, Sections 1, 2.*

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services. a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State; —between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the

State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed.

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. *Ohio Constitution, Article XVIII, Section 3*

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.